

REMARKS

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 1, 67, 68, 69, 70, 72, and 85 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1, 15-17, 67-72, 74-76, and 82-88 are now pending in this application. Claims 1, 67-70, and 85 are in independent form.

I. The Objection to the Abstract

The present Office Action objected to the Abstract due to allegedly being “replete with grammatical and idiomatic errors”. This objection is respectfully traversed for lack of factual or legal basis.

The present Office Action identifies no actual idioms, let alone idiomatic errors in the Abstract. Likewise, the present Office Action identifies no grammatical errors in the Abstract. Instead, a person having ordinary skill in the art would find the Abstract to be easily understandable.

The present Office Action alleges that the “Abstract fails to describe the general nature of composition”. Yet there is no legal requirement to provide such a description.

The legal requirements for an abstract are enumerated in 37 C.F.R. 1.72(b), which states:

[a] brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading “Abstract” or “Abstract of the Disclosure.” The sheet or sheets presenting the abstract may not include other parts of the application or other material. The abstract in an

application filed under 35 U.S.C. 111 may not exceed 150 words in length.

Aspirations and/or desires of the USPTO, such as those presented in the MPEP regarding what an Abstract “should” comprise, are not legally binding.

Applicant respectfully submits that the Abstract of the present Application as originally submitted was less than 150 words in length and thus was “brief”, pertained to the “technical disclosure”, commenced on a separate sheet under the heading “Abstract”, and the sheet on which it appeared did not include other parts of the application or other material. Thus, the Abstract of the present Application as originally submitted fully complies with the requirements of 37 C.F.R. 1.72(b). For at least these reasons, Applicant respectfully requests a withdrawal of the objection to the Abstract.

II. The Written Description Rejections

Each of claims 69, 71, 72, 74-76, and 82 was rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement, and thus was asserted to be unpatentable.

Without acquiescing to the present Office Action’s position, each of these rejections is respectfully traversed as moot in light of the current amendment to the corresponding claim. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

III. The Indefiniteness Rejections

Each of claims 69, 71-72, 74-76, and 82 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite, and thus was asserted to be unpatentable.

Without acquiescing to the present Office Action’s position, some of these rejections are respectfully traversed as moot in light of the current broadening amendment to the corresponding claim. Nevertheless, those rejections are based on a false premise, and therefore Applicant reserves the right to re-introduce the removed subject matter to each claim from which it has been removed.

To understand the false premise of the present Office Action, consider claim 69, which includes the language: “an aqueous solution comprising a dispersion of solid particles”.

The present Office Action argues that this language “is a contradictory statement” that “renders the claim indefinite because it is not clear what is claimed a ‘solution’ or ‘dispersion’?” The present Office Action further argues that:

“It is well known in the art that an aqueous solution of a solid polymer may be formed by dissolving a solid water-soluble polymer in water whereas water-insoluble polymer can be only dispersed in water because it cannot be dissolved in water”.

Applicant respectfully traverses. Regardless of how “an aqueous solution of a solid polymer may be formed”, that is not the claimed subject matter, and thus is irrelevant.

Considering instead strictly the claimed subject matter, a person having ordinary skill in the art knows that a gram of ordinary table salt will dissolve in a glass of ordinary tap water at a typical home kitchen’s ambient temperature and pressure to form an “aqueous solution”. A person having ordinary skill in the art also knows that into that glass one can dump and/or stir a gram of ordinary household white flour, thereby forming “an aqueous solution comprising a dispersion of solid particles”, and thereby showing that the premise for these rejections is incompatible with reality.

Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

IV. The Obviousness Rejections

Each of claims 69, 71-72, and 74-76 was rejected under 35 U.S.C. 103(a) as being obvious, and thus unpatentable over U.S. Patent 5,225,062 (“Yoshioka”). Each of these rejections is respectfully traversed.

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Yoshioka is Not Pertinent to the Claimed Subject Matter

Yoshioka allegedly discloses:

an “electrophoretic gel for the separation and recovery of” “desired substances such as proteins and nucleic acids” (col. 2, lines 5-13), which is ostensibly useful “for the preparation of recombinant DNA, the cloning of DNA, the preparation of antibodies, the determination of amino acid sequences, the mapping of peptides and the analysis of amino acids” (col. 1, lines 17-20).

By contrast, the present Application states that the described “composition, when applied to at least a portion of a surface of a material, can... reduce the threshold temperature at which substantial ice formation, frost damage, and/or freeze damage to the material will occur”. *See* paragraph 9.

A person having ordinary skill in the art at the relevant time would not have found that an “electrophoretic gel for the separation and recovery of” “desired substances such as proteins and nucleic acids” to be in the same field of endeavor as a “composition” for “reduc[ing] the threshold temperature at which substantial ice formation, frost damage, and/or freeze damage to the material will occur”.

Thus, one skilled would not find an “electrophoretic gel for the separation and recovery of” “desired substances such as proteins and nucleic acids” to be reasonably pertinent to the particular problem with which the inventor was involved.

Because they are directed at vastly different problems, one of skill in the art would consider Yoshioka to be non-analogous art to that of the claimed subject matter. Consequently, Yoshioka is not pertinent to the present Application and is not available as a reference.

For at least this reason, Applicant respectfully requests withdrawal of the rejection of each of claims 69, 71-72, and 74-76.

c. Inherency

The present Office Action implicitly admits that Yoshioka is missing certain claimed features, but counters that:

“It is the Examiner’s position that NIPAM copolymer an internally crosslinked polymer having phase change within claimed range of -3.89 to 4.4°C would have claimed molecular weight and claimed particle size, as required by claims 74-76.”
See, Page 7.

Yet no substantial evidence has been presented that the missing claimed features are “necessarily present” in Yoshioka. Thus, Applicant respectfully requests provision of evidence supporting the assertion that Yoshioka’s alleged “NIPAM copolymer” would have “the claimed molecular weight and claimed particle size, as required by claims 74-76.”

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses such reliance as improperly supported, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the “missing descriptive material is necessarily present, not merely probably or possibly present”, in any prior art reference cited to support such rejection.

d. Missing Claim Limitations

Without acquiescing to the present Office Action’s position, each of the obviousness rejections is respectfully traversed as moot in light of the current amendment to the corresponding claim.

Claim 69 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the cited references teach (i.e., disclose and/or enable), alone or in combination, a “dispersion of solid particles”.

Also, claim 69 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the cited references teach (i.e., disclose and/or enable), alone or in combination, “the composition adapted to form a coating over at least a portion of a surface of a plant, the coating weighing from about 0.5% to about 3% of a weight of a coated portion of the plant”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in modifying the applied portions of the reference relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented that the applied portions of the reference relied upon in the Office Action, **as attempted to be modified**, expressly or inherently teach **every** limitation of the independent claims, and the Office Action consequently fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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